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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/730,095
Filing Date: December 09, 2003
Appellant(s): TSUKAMOTO ET AL.

Andrew Telesz Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/16/2008 appealing from the Office action mailed 5/7/2007.

(1) Real Party in Interest

The real party in interest is Oki Electric Industry Co., Ltd.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

112 1st paragraph enablement rejection:

Claims 8 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 8 and 15 recites "said multimedia processor divides the karaoke event data into a number of event zones by executing a reset event"

Karaoke event data as described by the applicant in the specification in ¶ 25 and 29 of the application's pgpub (US 2004/0241632 A1) as procedure data or karaoke operation procedures. ¶ 40 of applicant's pgpub recites "event data also includes picture event (904,907) for displaying pictures, text event 903 for displaying text, audio event 906 for playing audio, video event (905, 908) for displaying moving images, and Reset Event for resetting event execution. These events are identified by the identifiers shown in Fig 8." Furthermore ¶ 55 of the application's pgpub recites "The Reset Event shown in Fig. 8 clears all previous event before Reset Event is executed. By use of a Reset Event all event can be cleared easily." The above recited section is confusing to the examiner as to how the reset event works if all previous event clears before the reset event is executed. Amidst the confusion of the specification and the claim language, the examiner best understood the claim from ordinary karaoke to mean that there are many karaoke event data (picture, songs, text and video) associated with different songs. All of the karaoke event data are time synchronized to play at a specified time during the song. As the user finishes

playing one of the songs, a new set of data is loaded into the cue, and the previous set of data is erased from the memory. However the examiner failed to find in the specification or in the claim language how to use the claimed invention, none of which is explained to the examiner by the specification or the claim language. The examiner is left with substantial guesswork to understand the claim language.

102 (e) rejection

Claims 6-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Naples et al. (US 2002/0162445 A1).

Re claims 6-12, Naples discloses a mobile karaoke device comprising a memory (Fig 1A, Server 30 and shared storage 30a) that stores karaoke contents including karaoke event data in time order and song data, the song data having synchronization data embedded therein; a sound generator (Fig 1A, Audio output subsystem 27) that plays sound responsive to the song data; and a multimedia processor (Fig 1A, Interactive karaoke system 10) that provides the song data to said sound generator, and that executes karaoke events according to the karaoke event data, said sound generator responding to receipt of the synchronization data embedded within the song data by sending an interrupt signal to said multimedia processor, said multimedia processor executing the karaoke events in time order in synchronization responsive to receipt of the interrupt signal. According to MPEP 2114, Apparatus claims must be structurally distinguishable from the prior art. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir.

1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinchart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). The examiner failed to find any distinction between the claimed apparatus and the cited prior art for having the same structure and capable of performing the same as the claimed invention. Re claims 7-12 describes the function limitations of the karaoke system that are capable of performed by Naples.

Re claim 13, Naples further teach a mobile karaoke service method comprising: storing karaoke contents including karaoke event data in time order and song data (§ 48, 49: "The standardized performance is encoded in one or more parts that can be played back synchronously by an interactive karaoke system. For instance, the standardized performance can be a song or musical performance, with various parts allocated to musicians and their vocals or instruments. The data file contains additional content such as timing cues, lyrics, and other features"), the song data having synchronization data embedded therein (§ 49 "the additional content is time-correlated to the audio content for synchronous playback"); playing sound responsive to the song data; generating an interrupt signal responsive to the synchronization data embedded within the song data is described as MIDI by Naples (Fig 16 shows MIDI mapping playback process, as § 5 explains how MIDI is used, "MIDI was designed for the recording and playback of digital audio

content on synthesizers. MIDI streams do not represent audio content directly but provided information about how the content is to be synthesized. MIDI streams are multi-track, where each track can be mapped to a discrete profile such as musical instrument. Each track of the MIDI stream includes the discrete notes to be played by that instrument. Since a MIDI file is the computer equivalent of traditional sheet music for a particular song ..."); and executing the karaoke events in time order in synchronization responsive to generation of the interrupt signal (playing the song in according to the digital sheet music when the user selects to start the playing (interrupt signal)).

Re claim 14, the karaoke event data is in groups which are each time ordered (¶ 49 each song includes a set of instructions for time-correlated to the audio content for synchronous playback.)

Re claim 15, the karaoke event data is divided into a number of event zones by executing a reset event (different songs within the system, when the user is ready to play a song, the song is selected, loaded and played as explained in ¶ 156-158, when the user is ready to play a different song, a new set of data is loaded and the previous is erased from the system).

Re claim 16, the karaoke event data is text data representative of text to be displayed (¶ 186, cue display can prompt the user with lyrics).

Re claim 17, the karaoke event data is a picture data representative of a picture to be displayed (§ 107, video track provides interactive visuals synchronized to the live performance. Video track includes a time-encoded series of visual frames for system to present to user in response to user interaction. For instance, automated music training can benefit from video response. Video track can include a stock series of pictures or movies.”

Re claim 18, the karaoke event data is video data representative of video to displayed (cited above in claim 17, § 107)

Re claim 19, the karaoke event data is audio data representative of audio to be played (§ 49, the additional content is time-correlated to the audio content for synchronous playback).

(10) Response to Argument

Appellant's argument:

(1) Claims 8 and 5 are in compliance with 35 U.S.C. 112, first paragraph Claims 8 and 15 have been rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the enablement requirement. This rejection is respectfully traversed for the following reasons.

As set forth on page 2 of the Final Office Action dated May 7, 2007, the Examiner has asserted that the claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. The Examiner has asserted that:

"The claims state that the event zones are separated by an execution of reset event, however it does not explain exactly how it is accomplished. The claim will be interpreted as best understood by the examiner".

As noted above, the Examiner has asserted that claim 8 for instance does not "explain exactly" how the features recited are "accomplished". However, as emphasized in the Request for Reconsideration dated August 3, 2007, claims may be

Art Unit: 3715

written broadly, without explaining or limiting how a function is carried out. That is, it should be understood as well settled that a claim may recite the function of an element or a component of a device, without explaining or limiting how **the element or component specifically carries out or performs the function**. For example, under 35 U.S.C. 112, sixth paragraph, merely the function of an element may be recited, without narrowly specifying how the function is carried out. (Appellants however do not suggest that claims 8 and 15 should be interpreted under 35 U.S.C. 112, sixth paragraph.)

On page 2 of the Advisory Action dated August 16, 2007, the Examiner has asserted:

"Furthermore, the claims itself does not explain or limit how the function is carried out. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims",

Appellants respectfully submit that this issue regarding how the claim language itself explains how a function is carried out, as perceived by the Examiner, is not properly addressable under 35 U.S.C. 112, first paragraph. That is, this issue regarding claim language as raised by the Examiner would appear to more properly be a matter of claim scope. This rejection under 35 U.S.C. 112, first paragraph is thus improper for at least these reasons.

The mobile karaoke device of claim 8 features that the multimedia processor "divides the karaoke event data into a number of event zones by executing a reset event".

As emphasized in the Supplemental Request for Reconsideration dated September 5, 2007, as described beginning on page 7, line 6 of the present application, event processing may be done in an overlapping mode, wherein for example a Text Event 903 as shown in Fig. 9 is displayed on the mobile device, in an overlapping manner with a Picture Event 904. It should be noted that Text Event 903, Picture Event 904 and Video Event 905 are shown together as Event Data-1. As further described beginning on page 7, line 14 of the present application, the Reset Event R as designated in Fig. 8, clears all previous events. That is, the display of the mobile device is cleared responsive to a Reset Event R, so that a subsequent or new block of Event Data such as Event Data-2 including Picture or Text Events may thereafter be displayed. As described beginning on page 7, line 19 of the present application, since the Reset Event has a clearing function, it should readily be understood that the Reset Event is useful as bounding or dividing karaoke events as displayed. The Reset Event R shown in Fig. 8 is an event that may be included as in the event data (Event Data-1 or Event Data-2) shown in Fig. 9.

Appellants respectfully submit that contrary to the Examiner's further assertions on page 2 of the Advisory Action dated August 16, 2007, one of ordinary skill in the art of mobile devices would readily understand how the above noted Reset Event may be characterized as bounding or dividing karaoke event data into a number of event zones, by clearing previous event data. One of ordinary skill would generally understand how karaoke events as displayed visually or musically could be cleared (in other words deleted so as to no longer be displayed or musically played). Consequently, one of ordinary skill in mobile communication device art would readily understand how to make and/or use such a device to carry out dividing event data by executing a Reset Event R as featured in claim 8.

Appellants further assert that there is no requirement in the statutes necessitating that a claim "exactly explains" how a function is accomplished, as apparently asserted by the Examiner. Such a requirement would unnecessarily limit claim scope.

Appellants respectfully submit that the specification would enable one of ordinary skill to make and/or use the invention, and that claims 8 and 15 are in compliance with 35 U.S.C. 112, first paragraph. The Board is therefore respectfully requested to withdraw this rejection.

The Appellant's arguments have been fully considered. However the examiner respectfully disagrees. Applicant has pointed to ¶ 53 (page 7, line 6), ¶ 55 (page 7, line 14), ¶ 57 (page 7, Line 19), Figures 8 and 9 to support claims 8 and 15. Karaoke event data as described by the applicant in the specification in ¶ 25 and 29 of the application's pgpub (US 2004/0241632 A1) as procedure data or karaoke operation procedures. ¶ 40 of applicant's pgpub recites "event data also includes picture event (904,907) for displaying pictures, text event 903 for displaying text, audio event 906 for playing audio, video event (905, 908) for displaying moving images, and Reset Event for resetting event execution. These events are identified by the identifiers shown in Fig 8." Furthermore ¶ 55 of the application's pgpub recites "The Reset Event shown in Fig. 8 clears all previous event before Reset Event is executed. By use of a Reset Event all event can be cleared easily." The above recited section is confusing to the examiner as to how the reset event works if all previous event clears before the reset event is executed. Amidst the confusion of the specification and the claim language, the examiner best understood the claim from ordinary karaoke to mean that there are many karaoke event data (picture, songs, text and video) associated with different songs. All of the karaoke event data are time synchronized to play at a specified time during the song. As the user finishes playing one of the songs, a new set of data is loaded into the cue, and the previous set of data is erased from the memory. However the examiner failed to find in the specification or in the claim language how to use the claimed

invention, none of which (§ 25, 29, 53, 55, 57 and figure 8 and 9) clearly explains the invention.

The examiner is left with substantial guesswork to understand the claim language.

Appellant's argument:

(2) Claims 6-19 distinguish over the Naples et al. reference

Claims 6-19 have been rejected under 35 U.S.C. 102(e) as being anticipated by the Naples et al. reference. This rejection is respectfully traversed for at least the following reasons.

Claims 6 and 13

The mobile karaoke device of claim 6 includes in combination among other features a sound generator "that plays sound responsive to the song data"; and a multimedia processor "that provides the song data to said sound generator, and that executes karaoke events according to the karaoke event data". The sound generator is further featured as "responding to receipt of the synchronization data embedded within the song data by sending an interrupt signal to said multimedia processor, said multimedia processor executing the karaoke events in time order in synchronization responsive to receipt of the interrupt signal". Appellants respectfully submit that the Naples et al. reference as relied upon by the Examiner fails to disclose all of these features.

The Examiner has very generally asserted on page 3, paragraph 2 of the Final Office Action dated May 7, 2007, that paragraphs 7, 11, 48-50, 56-62, 78, 87-91, 93, 107, 112-118, 195-199, 206-211 and 214 of the Naples et al. reference variously disclose the features of claim 6. The Examiner has not provided any comments identifying specific figures or circuit elements of the Naples et al. reference. The rejection is thus incomplete in this respect, and Appellants are left with substantial guesswork to formulate a response to the Final Office Action. Consequently, clear issues have not been developed prior to Appeal.

Appellants respectfully submit that the above noted paragraphs of the Naples et al. reference as generally relied upon by the Examiner do not specifically describe or disclose a sound generator that responds to receipt of synchronization data embedded within song data, and that sends an interrupt signal to a multimedia processor responsive to the synchronization data. Particularly, the Examiner has not identified a specific component in the various figures of the Naples et al. reference that generates sound, that generates an interrupt signal responsive to synchronization data embedded in received song data, and that also provides the interrupt signal to a multimedia processor. The Examiner has not specifically identified an interrupt signal. The Examiner has merely repeated the claims verbatim, identifying in general approximately 40 paragraphs of text that supposedly meet the features of the claims.

Responsive to the arguments presented in the Request for Reconsideration dated August 3, 2007, the Examiner has made further reference on page 2 of the Advisory Action dated August 16, 2007, to paragraphs [0048], [0049], [0097] and [0098]

Art Unit: 3715

of the Naples et al. reference. The Examiner has alleged that these paragraphs describe or disclose a sound generator that responds to receipt of synchronization data embedded within song data, and that sends an interrupt signal to a multimedia processor.

However, paragraph [0048] of the Naples et al. reference as specifically relied upon by the Examiner in the Advisory Action merely describes that a data file contains a standardized performance of music or sound digitally encoded. The standardized performance is encoded in one or more parts that "can be played back synchronously" by an interactive karaoke system.

Appellants respectfully submit that paragraph [0048] of the Naples et al. reference does not specifically describe a sound generator that plays sound responsive to song data, and that sends an interrupt signal responsive to sync data embedded within the song data to a multimedia processor. Although the standardized performance "can be played back synchronously" as described in paragraph [0048] of the Naples et al. reference, there is no description in this paragraph of sync data embedded in song data, or even how synchronous playback is achieved

In paragraph [0049] of the Naples et al. reference as specifically relied upon by the Examiner in the Advisory Action, the data file is described as containing additional content such as timing cues, lyrics, and other features. The additional content is time-correlated to audio content for synchronous playback. However, paragraph [0049] of the Naples et al. reference does not specifically describe a sound generator, and more particularly does not specifically describe a sound generator that provides an interrupt signal to a multimedia processor responsive to sync data embedded within song data. Paragraph [0049] in contrast describes timing cues and lyrics, not sync data embedded within song data played by a sound generator. Moreover, there is no description regarding how time-correlation and/or synchronous playback is accomplished in paragraph [0049] of the Naples et al. reference.

in paragraph [0097] of the Naples et al. reference as specifically relied upon by the Examiner in the Advisory Action, cue track 48c is described as specifying timing intervals during which the user is prompted for input stimuli. Paragraph [0097] of the Naples et al. reference does not specifically describe a sound generator, and more particularly does not describe a sound generator that generates an interrupt signal provided to a multimedia processor responsive to sync data embedded within song data. Cue track 48c as described in paragraph [0097] of the Naples et al. reference is not song data, or more particularly is not sync data embedded within song data.

Paragraph [0098] of the Naples et al. reference as specifically relied upon by the Examiner in the Advisory Action, further describes timing of a cue interval which indicates when a prompt should be displayed to the user. Paragraph [0098] of the Naples et al. reference does not describe a sound generator, and more particularly does not describe a sound generator that sends an interrupt signal to a multimedia processor responsive to sync data embedded within song data.

As emphasized above, the Examiner has very generally asserted on page 3 of the Final Office Action that paragraphs 7, 11, 48-50, 56-62, 78, 87-91, 93, 107, 112-118, 195-199, 206-211 and 214 of the Naples et al. reference variously disclose the features of claim 6. As also emphasized above, the Examiner has further asserted in the Advisory Action dated August 16, 2007, that paragraphs 48, 49, 97 and 98 disclose the features of claim 6. However, Appellants respectfully submit that the above noted

paragraphs of the Naples et al. reference as very generally relied upon by the Examiner do not specifically describe or disclose a sound generator that responds to receipt of sync data embedded with song data, and that sends an interrupt signal to a multimedia processor responsive to the embedded sync data. The Examiner has not specifically identified by reference numeral components in the figures of the Naples et al. reference that have been interpreted as the sound generator of claim 6. By very generally directing attention to the various numerous paragraphs of the Naples et al. reference, the Examiner has failed to clearly establish on the record how the Naples et al. reference has been interpreted to include a sound generator, sync data embedded within song data, and an interrupt signal provided by a sound generator responsive to sync data embedded within song data.

Of note, as described in paragraph [0196] of the Naples et al. reference with respect to Fig. 14A, performance timer interface 84 allows exchange of timing signals, or more particular the dissemination of a clock pulse. This would appear to imply that timing is not achieved based on interrupt signals derived from sync signals embedded within song data, as featured in claim 6. For example and not to be construed as limiting, the synchronization data is described on page 6, lines 16-17 of the present application as possibly special data strings, such as the data of MIDI channel 10 of note number 127. Clearly, the disseminated clock of the Naples et al. reference as noted above can not be interpreted as synchronization data embedded within song data, or an interrupt signal responsive thereto, as featured in claim 6. Appellants therefore respectfully submit that the mobile karaoke device of claim 6 distinguishes over the Naples et al. reference as relied upon by the Examiner, and that this rejection of claims 6-12 is improper for at least these reasons.

The mobile karaoke service method of claim 13 includes in combination "playing sound responsive to the song data"; "generating an interrupt signal responsive to the synchronization data embedded within the song data"; and "executing the karaoke events in time order in synchronization responsive to generation of the interrupt signal". Applicants respectfully submit that the Naples et al. reference as relied upon by the Examiner fails to disclose these features.

The Examiner has asserted in the Final Office Action dated May 7, 2007, that the rejection of claims 6-12 gives sufficient grounds for rejecting claims 13-19. However, the above noted paragraphs of the Naples et al. reference as very generally relied upon by the Examiner do not specifically describe or disclose generating an interrupt signal responsive to synchronization data embedded within song data, and executing karaoke events in time order in synchronization responsive to generation of the interrupt signal. As noted above, the Examiner has not specifically identified in the Naples et al. reference an interrupt signal, or song data having synchronization data embedded therein, as would be necessary to anticipate claim 13. Appellants therefore respectfully submit that the mobile karaoke service method of claim 13 distinguishes over the Naples et al. reference as relied upon by the Examiner, and that this rejection of claims 13-19 is improper for at least these reasons.

The Appellant arguments have been fully considered. However the examiner respectfully disagrees.

Re claims 6-12, Naples discloses a mobile karaoke device comprising a memory (Fig 1A, Server 30 and shared storage 30a) that stores karaoke contents including karaoke event data in time order and song data, the song data having synchronization data embedded therein; a sound generator (Fig 1A, Audio output subsystem 27) that plays sound responsive to the song data; and a multimedia processor (Fig 1A, Interactive karaoke system 10) that provides the song data to said sound generator, and that executes karaoke events according to the karaoke event data, said sound generator responding to receipt of the synchronization data embedded within the song data by sending an interrupt signal to said multimedia processor, said multimedia processor executing the karaoke events in time order in synchronization responsive to receipt of the interrupt signal. According to MPEP 2114, Apparatus claims must be structurally distinguishable from the prior art. While features of an apparatus may be recited either structurally or functionally, claims <directed to>an apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). The examiner failed to find any distinction between the claimed apparatus and the cited prior art for having the same structure and capable of performing the same as the

claimed invention and all structure limitations of the claim has been addressed. Re claims 7-12 describes the function limitations of the karaoke system that are capable of performed by Naples.

Re claim 13, Naples further teach a mobile karaoke service method comprising: storing karaoke contents including karaoke event data in time order and song data (§ 48, 49: “The standardized performance is encoded in one or more parts that can be played back synchronously by an interactive karaoke system. For instance, the standardized performance can be a song or musical performance, with various parts allocated to musicians and their vocals or instruments. The data file contains additional content such as timing cues, lyrics, and other features”), the song data having synchronization data embedded therein (§ 49 “the additional content is time-correlated to the audio content for synchronous playback”); playing sound responsive to the song data; generating an interrupt signal responsive to the synchronization data embedded within the song data is described as MIDI by Naples (Fig 16 shows MIDI mapping playback process, as § 5 explains how MIDI is used, “MIDI was designed for the recording and playback of digital audio content on synthesizers. MIDI streams do not represent audio content directly but provided information about how the content is to be synthesized. MIDI streams are multi-track, where each track can be mapped to a discrete profile such as musical instrument. Each track of the MIDI stream includes the discrete notes to be played by that instrument. Since a MIDI file is the computer equivalent of traditional sheet music for a particular song ...”); and executing the karaoke events in time order in synchronization responsive to generation of the interrupt signal (playing the song in according to the digital sheet music when the user selects to start the playing (interrupt signal)).

The examiner asserts that all features as claimed in claims 6 and 13 are addressed clearly.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Kang Hu/

Examiner, Art Unit 3715

Conferees:

/XUAN M. THAI/

Supervisory Patent Examiner, Art Unit 3715

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